

FIRST REGULAR SESSION

# HOUSE BILL NO. 567

## 91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TREADWAY.

Read 1<sup>st</sup> time January 29, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1484L.011

### AN ACT

To repeal sections 324.083, 324.086, 324.205, 324.212, 324.217, 324.522, 329.210 and 337.612, RSMo 2000, relating to professional registration, and to enact in lieu thereof seven new sections relating to the same subject, with penalty provisions for a certain section.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 324.083, 324.086, 324.205, 324.212, 324.217, 324.522, 329.210 and 337.612, RSMo 2000, are repealed and seven new sections enacted in lieu thereof, to be known as sections 324.086, 324.205, 324.212, 324.217, 324.522, 329.210 and 337.612, to read as follows:

[324.083. 1. The division, in collaboration with the board, may refuse to issue or renew, suspend or revoke a license or permit, or place a license or permit holder on probation or otherwise reprimand a licensee or permit holder, when the licensee, permit holder or applicant has been found guilty of unprofessional conduct which has endangered, or is likely to endanger, the health, welfare or safety of any person, as provided in sections 324.050 to 324.089 or by any rule or regulation promulgated by the division, in collaboration with the board.

2. If the division, in collaboration with the board, refuses to issue or renew a license or permit, the person shall be notified in writing of the reasons for such refusal and shall advise the person of the person's right to file a complaint with the administrative hearing commission as provided in chapter 621, RSMo.

3. The division, in collaboration with the board, may cause a complaint to be filed concerning a person who is the holder of a license or permit issued pursuant to sections 324.050 to 324.089 or any complaint regarding any professional practice regulated by sections 324.050 to 324.089 shall be recorded as received and the date received. The division, in collaboration with the board:

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17                   (1) Shall investigate all complaints concerning alleged violations of the  
18 provisions of sections 324.050 to 324.089. Division investigators shall investigate  
19 complaints and make inspections and any inquiries as, in the judgment of the  
20 division, are appropriate to enforce the provisions of sections 324.050 to 324.089;

21                   (2) May, if the evidence supports such action, cause a complaint to be filed  
22 with the administrative hearing commission as provided in chapter 621, RSMo,  
23 against any holder of any license or permit issued pursuant to sections 324.050 to  
24 324.089.]

324.086. [The division, in collaboration with the board, may discipline or sanction any  
2 holder of a license or permit issued pursuant to sections 324.050 to 324.089 for any one or any  
3 combination of the following:

4                   (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic  
5 beverage to an extent that such use impairs a person's professional performance or responsibility;

6                   (2) Finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere,  
7 in a criminal prosecution under the laws of any state, the United States or any territory of the  
8 United States, for any offense reasonably related to the qualifications, functions or duties of an  
9 occupational therapist or occupational therapy assistant; for any offense for which an essential  
10 element is fraud, dishonesty or an act of violence; or for any offense involving moral turpitude,  
11 whether or not sentence is imposed;

12                   (3) Use of fraud, deception, misrepresentation or bribery in securing any credential,  
13 license or permit, or to aid or abet any person in a violation of this section;

14                   (4) Incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance  
15 of the functions or duties of an occupational therapist or occupational therapy assistant or a  
16 violation of any professional trust or confidence;

17                   (5) Violation of, or assisting or enabling any person to violate, any provision of sections  
18 324.050 to 324.089 or any lawful rule or regulation promulgated thereunder;

19                   (6) Impersonate, in any manner, or pretend to be any person holding a valid license or  
20 permit as an occupational therapist or occupational therapy assistant or allowing any other person  
21 to use such person's credentials;

22                   (7) Finally adjudged incapacitated by a court of competent jurisdiction;

23                   (8) Assisting or enabling any person to practice, or offer to practice, occupational therapy  
24 services if such person does not hold a valid license or permit issued pursuant to sections  
25 324.050 to 324.089;

26                   (9) Use of any advertisement or solicitation which is false, misleading or deceptive to  
27 the general public or persons to whom the advertisement or solicitation is primarily directed;

28                   (10) Unethical conduct as defined in the ethical standards for occupational therapists and  
29 occupational therapy assistants adopted by the division and filed with the secretary of state;

30                   (11) Failure to give notification of the suspension, probation or revocation of any past

31 or currently held licenses, certificates or registrations required to practice occupational therapy  
32 in this or any other jurisdiction or the failure to renew or surrender such license, certificate or  
33 registration;

34 (12) Discipline in another state or by a certifying body; or

35 (13) Otherwise violate any provision of sections 324.050 to 324.089.] **1. The board**  
36 **may refuse to issue or renew any certificate of registration or authority, permit or license**  
37 **required pursuant to sections 324.050 to 324.089 for one or any combination of causes**  
38 **stated in subsection 2 of this section. The board shall notify the applicant in writing of the**  
39 **reasons for the refusal and shall advise the applicant of his or her right to file a complaint**  
40 **with the administrative hearing commission as provided by chapter 621, RSMo.**

41 **2. The board may cause a complaint to be filed with the administrative hearing**  
42 **commission as provided by chapter 621, RSMo, against any holder of any certificate of**  
43 **registration or authority, permit or license required by sections 324.050 to 324.089 or any**  
44 **person who has failed to renew or has surrendered his or her certificate of registration or**  
45 **authority, permit or license for any one or any combination of the following causes:**

46 (1) Use or unlawful possession of any controlled substance, as defined in chapter  
47 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to  
48 perform the work of an occupational therapist or occupational therapy assistant;

49 (2) The person has been finally adjudicated and found guilty, or entered a plea of  
50 guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the  
51 United States, for any offense reasonably related to the qualifications, functions or duties  
52 of any profession licensed or regulated by sections 324.050 to 324.089, for any offense an  
53 essential element of which is fraud, dishonesty or an act of violence, or for any offense  
54 involving moral turpitude, whether or not sentence is imposed;

55 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate  
56 of registration or authority, permit or license issued pursuant to sections 324.050 to 324.089  
57 or in obtaining permission to take any examination given or required pursuant to sections  
58 324.050 to 324.089;

59 (4) Obtaining or attempting to obtain any fee, charge, tuition or other  
60 compensation by fraud, deception or misrepresentation;

61 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or  
62 dishonesty in the performance of the functions and duties of any profession licensed or  
63 regulated by sections 324.050 to 324.089;

64 (6) Violation of, or assisting or enabling any person to violate, any provision of  
65 sections 324.050 to 324.089 or any lawful rule or regulation adopted pursuant to sections  
66 324.050 to 324.089;

67           (7) Impersonation of any person holding a certificate of registration or authority,  
68 permit or license or allowing any person to use his or her certificate of registration or  
69 authority, permit, license or diploma from any school;

70           (8) Disciplinary action against the holder of a license or other right to practice any  
71 profession regulated by sections 324.050 to 324.089 granted by another state, territory,  
72 federal agency or country upon grounds for which revocation or suspension is authorized  
73 in this state;

74           (9) A person is finally adjudged insane or incompetent by a court of competent  
75 jurisdiction;

76           (10) Assisting or enabling any person to practice or offer to practice any profession  
77 licensed or regulated by sections 324.050 to 324.089 who is not registered and currently  
78 eligible to practice pursuant to sections 324.050 to 324.089;

79           (11) Issuance of a certificate of registration or authority, permit or license based  
80 upon a material mistake of fact;

81           (12) Violation of any professional trust or confidence;

82           (13) Use of any advertisement or solicitation which is false, misleading or deceptive  
83 to the general public or persons to whom the advertisement or solicitation is primarily  
84 directed;

85           (14) Unethical conduct as defined in the ethical standards for occupational  
86 therapists and occupational therapy assistants adopted by the division and filed with the  
87 secretary of state;

88           (15) Violation of the drug laws or rules and regulations of this state, any other state  
89 or federal government.

90           3. After the filing of such complaint, the proceedings shall be conducted in  
91 accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
92 administrative hearing commission that the grounds, provided in subsection 2 of this  
93 section for disciplinary action are met, the board may, singly or in combination, censure  
94 or place the person named in the complaint on probation with such terms and conditions  
95 as the board deems appropriate for a period not to exceed five years, or may suspend, for  
96 a period not to exceed three years, or may revoke the license, certificate or permit.

97           4. An individual whose license has been revoked shall wait at least one year from  
98 the date of revocation to apply for relicensure. Relicensure shall be at the discretion of the  
99 board after compliance with all requirements of sections 324.050 to 324.089 relative to the  
100 licensing of the applicant for the first time.

324.205. 1. After July 1, 2000, no person may use the title licensed dietitian or L.D. in  
2 this state unless the person is licensed pursuant to the provisions of sections 324.200 to 324.225.

3           2. Any person who violates the provisions of subsection 1 of this section is guilty of [an  
4   infraction] **a class A misdemeanor**.

          324.212. 1. Applications for licensure as a dietitian shall be in writing, submitted to the  
2   committee on forms prescribed by the division and furnished to the applicant. The application  
3   shall contain the applicant's statements showing the applicant's education, experience and such  
4   other information as the committee may require. Each application shall contain a statement that  
5   it is made under oath or affirmation and that the information contained therein is true and correct  
6   to the best knowledge and belief of the applicant, subject to the penalties provided for the making  
7   of a false affidavit or declaration. Each application shall be accompanied by the fees required  
8   by the committee.

9           2. The division shall mail a renewal notice to the last known address of each licensee  
10   prior to the [licensure] renewal date. Failure to provide the committee with the information  
11   required for [licensure] **renewal**, or to pay the [licensure] **renewal** fee after such notice shall  
12   effect a noncurrent license. The license shall be [restored] **reinstated** if, within two years of the  
13   [licensure] **renewal** date, the applicant submits the required documentation and pays the  
14   applicable fees as approved by the committee.

15          3. A new [certificate] **license** to replace any [certificate] **license** lost, destroyed or  
16   mutilated may be issued subject to the rules of the committee upon payment of a fee.

17          4. The committee shall set by rule the appropriate amount of fees authorized herein. The  
18   fees shall be set at a level to produce revenue which shall not exceed the cost and expense of  
19   administering the provisions of sections 324.200 to 324.225. All fees provided for in sections  
20   324.200 to 324.225 shall be collected by the director who shall transmit the funds to the director  
21   of revenue to be deposited in the state treasury to the credit of the "Dietitian Fund" which is  
22   hereby created.

23          5. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in  
24   this fund shall not be transferred and placed to the credit of general revenue until the amount in  
25   the fund at the end of the biennium exceeds three times the amount of the appropriation from the  
26   dietitian fund for the preceding fiscal year. The amount, if any, in the fund which shall lapse is  
27   that amount in the fund which exceeds the appropriate multiple of the appropriations from the  
28   dietitian fund for the preceding fiscal year.

          324.217. 1. The committee may refuse to issue any license or renew any license required  
2   by the provisions of sections 324.200 to 324.225 for one or any combination of reasons stated  
3   in subsection 2 of this section. The committee shall notify the applicant in writing of the reasons  
4   for the refusal and shall advise the applicant of the right to file a complaint with the  
5   administrative hearing commission as provided in chapter 621, RSMo.

6           2. The committee may cause a complaint to be filed with the administrative hearing

commission as provided in chapter 621, RSMo, against the holder of any license required by sections 324.200 to 324.225 or any person who has failed to renew or has surrendered the person's license for any one or any combination of the following causes:

(1) Use of fraud, deception, misrepresentation or bribery in securing a license issued pursuant to the provisions of sections 324.200 to 324.225 or in obtaining permission to take the examination required pursuant to sections 324.200 to 324.225;

(2) Impersonation of any person holding a license or allowing any person to use his or her license or diploma from any school;

(3) [Revocation or suspension] **Disciplinary action against the holder** of a license or other right to practice medical nutrition therapy by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(4) [Obtaining] **Issuance of** a license based upon a material mistake of fact; or

(5) [Failure to display a valid license if so required by sections 324.200 to 324.225 or any rule promulgated pursuant thereto] **The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or the United States, for any offense reasonably related to the qualifications, functions, or duties of the professional regulated pursuant to sections 324.200 to 324.225, for any offense an essential element of which is fraud, dishonesty or act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;**

(6) **Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of the profession regulated by sections 324.200 to 324.225;**

(7) **Violation of, or assisting or enabling any person to violate, any provision of sections 324.200 to 324.225, or any lawful rule or regulation adopted pursuant to such sections;**

(8) **A person is finally adjudged insane or incompetent by a court of competent jurisdiction;**

(9) **Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;**

(10) **Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;**

(11) **Use or unlawful possession of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 324.200 to 324.225;**

43           **(12) Violation of the drug laws or rules and regulations of this state, any other state**  
44 **or the federal government;**

45           **(13) Violation of any professional trust or confidence.**

46           3. Any person, organization, association or corporation who reports or provides  
47 information to the committee pursuant to the provisions of sections 324.200 to 324.225 and who  
48 does so in good faith shall not be subject to an action for civil damages as a result thereof.

49           4. After the filing of a complaint pursuant to subsection 2 of this section, the proceedings  
50 shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by  
51 the administrative hearing commission that the grounds, provided in subsection 2 of this section,  
52 for disciplinary action are met, the committee may, singly or in combination, censure or place  
53 the person named in the complaint on probation on such terms and conditions as the committee  
54 deems appropriate for a period not to exceed [three] **five** years, or **may suspend, for a period**  
55 **not to exceed three years, or** revoke the license of the person. **An individual whose license**  
56 **has been revoked shall wait one year from the date of revocation to apply for relicensure.**  
57 **Relicensure shall be at the discretion of the committee after compliance with all**  
58 **requirements of sections 324.200 to 324.225 relative to the licensing of an applicant for the**  
59 **first time.**

60           5. The committee shall maintain an information file containing each complaint filed with  
61 the committee relating to a holder of a license. [The committee, at least quarterly, shall notify  
62 the complainant and holder of a license of the complaint's status until final disposition.]

63           6. The committee shall recommend for prosecution violations of sections 324.200 to  
64 324.225 to an appropriate prosecuting or circuit attorney.

324.522. 1. No practitioner of tattooing, body piercing or branding shall practice and  
2 no establishment in which tattoos, body piercing or brandings are applied shall be operated  
3 without a license issued by the director of the division of professional registration. The license  
4 fee for each practitioner and each establishment shall be established by rule.

5           2. The director of the division of professional registration shall promulgate rules and  
6 regulations relative to the hygienic practice of tattooing, **body piercing and branding**, and  
7 sanitary operations of tattoo, **body piercing and branding** establishments. Such rules and  
8 regulations shall include:

9           (1) Standards of hygiene to be met and maintained by establishments and practitioners  
10 in order to receive and maintain a license for the practice of tattooing, **body piercing and**  
11 **branding;**

12           (2) Procedures to be used to grant, revoke or reinstate a license;

13           (3) Inspection of tattoo, **body piercing and branding** establishments; and

14           (4) Any other matter necessary to the administration of this section.

15           3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
16 is created under the authority delegated in sections 324.520 to 324.524 shall become effective  
17 only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if  
18 applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999,  
19 is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or  
20 affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with  
21 all applicable provisions of law. This section and chapter 536, RSMo, are nonseverable and if  
22 any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review,  
23 to delay the effective date or to disapprove and annul a rule are subsequently held  
24 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after  
25 August 28, 1999, shall be invalid and void.

329.210. 1. The board shall have power to:

2           (1) Prescribe by rule for the examinations of applicants for licensure to practice the  
3 classified occupation of cosmetology and issue licenses;

4           (2) Prescribe by rule for the inspection of cosmetology establishments and schools and  
5 appoint the necessary inspectors and examining assistants;

6           (3) Prescribe by rule for the inspection of establishments and schools of cosmetology by  
7 persons licensed in cosmetology as to their sanitary conditions and to appoint the necessary  
8 inspectors and, if necessary, examining assistants; and set the amount of the fees which this  
9 chapter authorizes and requires, by rules and regulations promulgated pursuant to section  
10 536.021, RSMo. The fees shall be set at a level sufficient to produce revenue which shall not  
11 substantially exceed the cost and expense of administering this chapter;

12           (4) Employ and remove board personnel, as defined in subdivision (4) of subsection 15  
13 of section 620.010, RSMo, as may be necessary for the efficient operation of the board, within  
14 the limitations of its appropriation;

15           (5) Elect one of its members president, one vice president and one secretary; and

16           (6) Determine the sufficiency of the qualifications of applicants.

17           2. The board shall create no expense exceeding the sum received from time to time from  
18 fees imposed pursuant to this chapter.

19           3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
20 is promulgated under the authority of this chapter, shall become effective only if the agency has  
21 fully complied with all of the requirements of chapter 536, RSMo, including but not limited to,  
22 section 536.028, RSMo, if applicable, after August 28, 1998. All rulemaking authority delegated  
23 prior to August 28, 1998, is of no force and effect and repealed as of August 28, 1998, however  
24 nothing in this act shall be interpreted to repeal or affect the validity of any rule adopted and  
25 promulgated prior to August 28, 1998. If the provisions of section 536.028, RSMo, apply, the



26 provisions of this section are nonseverable and if any of the powers vested with the general  
27 assembly pursuant to section 536.028, RSMo, to review, to delay the effective date, or to  
28 disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported  
29 grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking  
30 shall be invalid and void, except that nothing in this act shall affect the validity of any rule  
31 adopted and promulgated prior to August 28, 1998.

337.612. 1. Applications for licensure as a clinical social worker shall be in writing,  
2 submitted to the committee on forms prescribed by the committee and furnished to the applicant.  
3 The application shall contain the applicant's statements showing the applicant's education,  
4 experience, and such other information as the committee may require. Each application shall  
5 contain a statement that it is made under oath or affirmation and that the information contained  
6 therein is true and correct to the best knowledge and belief of the applicant, subject to the  
7 penalties provided for the making of a false affidavit or declaration. Each application shall be  
8 accompanied by the fees required by the committee.

9 2. The committee shall mail a renewal notice to the last known address of each licensee  
10 prior to the licensure renewal date. Failure to provide the committee with the information  
11 required for licensure, or to pay the licensure fee after such notice shall effect a revocation of the  
12 license after a period of sixty days from the licensure renewal date. The license shall be restored  
13 if, within two years of the licensure date, the applicant provides written application and the  
14 payment of the licensure fee and a delinquency fee.

15 3. A new certificate to replace any certificate lost, destroyed or mutilated may be issued  
16 subject to the rules of the committee, upon payment of a fee.

17 4. The committee shall set the amount of the fees which sections 337.600 to 337.639  
18 authorize and require by rules and regulations promulgated pursuant to section 536.021, RSMo.  
19 The fees shall be set at a level to produce revenue which shall not substantially exceed the cost  
20 and expense of administering the provisions of sections 337.600 to 337.639. All fees provided  
21 for in sections 337.600 to 337.639 shall be collected by the director who shall deposit the same  
22 with the state treasurer in a fund to be known as the "Clinical Social Workers Fund".

23 5. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in  
24 this fund shall not be transferred and placed to the credit of general revenue until the amount in  
25 the fund at the end of the biennium exceeds two times the amount of the appropriations from the  
26 clinical social workers fund for the preceding fiscal year **or, if the committee requires by rule**  
27 **renewal less frequently than yearly, then three times the appropriation from the**  
28 **committee's fund for the preceding fiscal year.** The amount, if any, in the fund which shall  
29 lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations  
30 from the clinical social workers fund for the preceding fiscal year.